

BENDAU & BENDAU PLLC
Clifford P. Bendau, II (030204)
Christopher J. Bendau (032981)
P.O. Box 97066
Phoenix, Arizona 85060
Telephone: (480) 382-5176
Facsimile: (480) 304-3805
Email: cliffordbendau@bendaulaw.com
chris@bendaulaw.com
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Raymond Nichol,

Plaintiff,

vs.

On Point Solar Power, LLC, an Arizona
limited liability company, **On Point**
Alarm, Inc., an Arizona corporation,
Jacob Davidson and Jane Doe
Davidson, a married couple, and **James**
Werner and Jane Doe Werner, a
married couple,

Defendants.

No.

VERIFIED COMPLAINT

Plaintiff, Raymond Nichol (“Plaintiff” or “Raymond Nichol”), sues the
Defendants On Point Solar Power, LLC, On Point Alarm, Inc., Jacob Davidson and Jane
Doe Davidson, and James Werner and Jane Doe Werner, (collectively “Defendants”) and
alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for unpaid minimum wages, liquidated damages,
attorneys’ fees, costs, and interest under the Fair Labor Standards Act (“FLSA”), 29

1 U.S.C. § 201, et seq.; unpaid minimum wage under the Arizona Minimum Wage Act
2 (“AMWA”), Arizona Revised Statutes (“A.R.S.”) Title 23, Chapter 2, Article 8; and
3 unpaid wages under the Arizona Wage Act (“AWA”), A.R.S. Title 23, Chapter 2, Article
4 7.

5
6 2. The FLSA was enacted “to protect all covered workers from substandard
7 wages and oppressive working hours.” Barrentine v. Ark Best Freight Sys. Inc., 450 U.S.
8 728, 739 (1981). Under the FLSA, employers must pay all non-exempt employees a
9 minimum wage of pay for all time spent working during their regular 40-hour
10 workweeks. See 29 U.S.C. § 206(a).

11
12 3. The AMWA, A.R.S § 23-363, et seq., establishes a minimum wage within
13 the State of Arizona.

14 4. The AWA, A.R.S. § 23-350, et seq., establishes standards for wage
15 payments to employees within the State of Arizona.
16

17 **JURISDICTION AND VENUE**

18 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
19 29 U.S.C. § 201, *et seq.* because this civil action arises under the Constitution and law of
20 the United States. This Court also has subject matter jurisdiction pursuant 28 U.S.C. §
21 1367 because the state law claims asserted herein are so related to claims in this action
22 over which this Court has subject matter jurisdiction that they form part of the same case
23 or controversy under Article III of the United States Constitution.
24

25 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because
26 acts giving rise to the claims of Plaintiff occurred within the District of Arizona, and
27

1 Defendants regularly conduct business in and have engaged in the wrongful conduct
2 alleged herein – and, thus, are subject to personal jurisdiction in – this judicial district.

3 **PARTIES**

4 7. At all times material to the matters alleged in this Complaint, Plaintiff was
5 an individual residing in Maricopa County, Arizona, and is a former employee of
6 Defendants.
7

8 8. At all material times, On Point Solar Power, LLC was a limited liability
9 company duly licensed to transact business in the State of Arizona. At all material times,
10 Defendant On Point Solar Power, LLC does business, has offices, and/or maintains
11 agents for the transaction of its customary business in Maricopa County, Arizona.
12

13 9. At all relevant times, Defendant On Point Solar Power, LLC owned and
14 operated as “On Point Solar Power,” a residential solar power system installer located in
15 Phoenix, AZ.
16

17 10. Under the FLSA, Defendant On Point Solar Power, LLC is an employer.
18 The FLSA defines “employer” as any person who acts directly or indirectly in the interest
19 of an employer in relation to an employee. At all relevant times, Defendant On Point
20 Solar Power, LLC had the authority to hire and fire employees, supervised and controlled
21 work schedules or the conditions of employment, determined the rate and method of
22 payment, and maintained employment records in connection with Plaintiff’s employment
23 with Defendants. As a person who acted in the interest of Defendant On Point Solar
24 Power, LLC in relation to the company’s employees, Defendant On Point Solar Power,
25 LLC is subject to liability under the FLSA.
26
27

1 11. At all material times, On Point Alarm, Inc. was a limited liability company
2 duly licensed to transact business in the State of Arizona. At all material times,
3 Defendant On Point Alarm, Inc. does business, has offices, and/or maintains agents for
4 the transaction of its customary business in Maricopa County, Arizona.

5
6 12. At all relevant times, Defendant On Point Alarm, Inc. owns the tradename
7 “On Point Solar Power.”

8 13. Under the FLSA, Defendant On Point Alarm, Inc. is an employer. The
9 FLSA defines “employer” as any person who acts directly or indirectly in the interest of
10 an employer in relation to an employee. At all relevant times, Defendant On Point
11 Alarm, Inc. had the authority to hire and fire employees, supervised and controlled work
12 schedules or the conditions of employment, determined the rate and method of payment,
13 and maintained employment records in connection with Plaintiff’s employment with
14 Defendants. As a person who acted in the interest of Defendant On Point Alarm, Inc. in
15 relation to the company’s employees, Defendant On Point Alarm, Inc. is subject to
16 liability under the FLSA.

17
18
19 14. Defendants Jacob Davidson and Jane Doe Davidson are, upon information
20 and belief, husband and wife. They have caused events to take place giving rise to the
21 claims in this Complaint as to which their marital community is fully liable. Jacob
22 Davidson and Jane Doe Davidson are owners of Defendants On Point Solar Power, LLC
23 and On Point Alarm, Inc and were at all relevant times Plaintiff’s employers as defined
24 by the FLSA, 29 U.S.C. § 203(d).
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1 15. Under the FLSA, Defendants Jacob Davidson and Jane Doe Davidson are
2 employers. The FLSA defines “employer” as any person who acts directly or indirectly
3 in the interest of an employer in relation to an employee. At all relevant times,
4 Defendants Jacob Davidson and Jane Doe Davidson had the authority to hire and fire
5 employees, supervised and controlled work schedules or the conditions of employment,
6 determined the rate and method of payment, and maintained employment records in
7 connection with Plaintiff’s employment with Defendants. As persons who acted in the
8 interest of Defendants On Point Solar Power, LLC and On Point Alarm, Inc. in relation to
9 the company’s employees, Defendants Jacob Davidson and Jane Doe Davidson are
10 subject to individual liability under the FLSA.
11

12 16. Defendants James Werner and Jane Doe Werner are, upon information and
13 belief, husband and wife. They have caused events to take place giving rise to the claims
14 in this Complaint as to which their marital community is fully liable. James Werner and
15 Jane Doe Werner are owners of Defendants On Point Solar Power, LLC and On Point
16 Alarm, Inc. and were at all relevant times Plaintiff’s employers as defined by the FLSA,
17 29 U.S.C. § 203(d).
18

19 17. Under the FLSA, Defendants James Werner and Jane Doe Werner are
20 employers. The FLSA defines “employer” as any person who acts directly or indirectly
21 in the interest of an employer in relation to an employee. At all relevant times,
22 Defendants James Werner and Jane Doe Werner had the authority to hire and fire
23 employees, supervised and controlled work schedules or the conditions of employment,
24 determined the rate and method of payment, and maintained employment records in
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1 connection with Plaintiff's employment with Defendants. As persons who acted in the
2 interest of Defendants On Point Solar Power, LLC and On Point Alarm, Inc. in relation to
3 the company's employees, Defendants James Werner and Jane Doe Werner are subject to
4 individual liability under the FLSA.

5
6 18. Plaintiff is further informed, believes, and therefore alleges that each of the
7 Defendants herein gave consent to, ratified, and authorized the acts of all other
8 Defendants, as alleged herein.

9
10 19. Defendants, and each of them, are sued in both their individual and
11 corporate capacities.

12 20. Defendants are jointly and severally liable for the injuries and damages
13 sustained by Plaintiff.

14 21. At all relevant times, Plaintiff was an "employee" of Defendants as defined
15 by the FLSA, 29 U.S.C. § 201, *et seq.*

16
17 22. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
18 Defendants.

19 23. At all relevant times, Defendants were and continue to be "employers" as
20 defined by the FLSA, 29 U.S.C. § 201, *et seq.*

21
22 24. The provisions set forth in the A.R.S. Title 23, Articles 7 and 8 apply to
23 Defendants.

24 25. At all relevant times, Plaintiff was an "employee" of Defendants as defined
25 by A.R.S. § 23-362.

27. Defendants individually and/or through an enterprise or agent, directed and exercised control over Plaintiff's work and wages at all relevant times.

29. At all relevant times, Plaintiff, in his work for Defendants, was engaged in commerce or the production of goods for commerce.

31. Plaintiff, in his work for Defendant, regularly handled goods produced or transported in interstate commerce.

32. Defendants own and/or operate as On Point Solar Power, an enterprise located in Maricopa County, Arizona.

34. At all relevant times, Plaintiff worked for Defendants until approximately July 2021.

36. Defendants, in their sole discretion, paid Plaintiff an hourly rate of \$35.00, regardless of the number of hours he worked in a given workweek.

1 37. Defendants classified Plaintiff as W-2 employee.

2 38. In his work for Defendants, Plaintiff was not compensated on a salary basis.

3 39. In his work for Defendants, Plaintiff did not have supervisory authority
4 over any employees.

5 40. In his work for Defendants, Plaintiff did not possess the authority to hire or
6 fire employees.

7 41. In his work for Defendants, Plaintiff did not possess authority to make
8 critical job decisions with respect to any of Defendants' employees.

9 42. In his work for Defendants, Plaintiff did not direct the work of two or more
10 employees.

11 43. In his work for Defendants, Plaintiff did not exercise discretion and
12 independent judgment with respect to matters of significance.

13 44. Plaintiff's primary duty was not the management of the enterprise in which
14 he was employed or any recognized department of the enterprise.

15 45. At all relevant times, Defendants controlled Plaintiff's schedules.

16 46. At all relevant times, Plaintiff was economically dependent on Defendants.

17 47. During his final pay period of work with Defendants, Plaintiff worked
18 approximately 40 hours.

19 48. Defendants refused to pay Plaintiff his final paycheck for allegedly
20 damaging a work truck.

21 49. Therefore, for the final pay period that Plaintiff worked for Defendants,
22 Defendants paid Plaintiff no wages whatsoever.

1 50. As a result of not having paid any wage whatsoever to Plaintiff during his
2 final pay period with Defendants, Defendants failed to pay the applicable minimum wage
3 to Plaintiff.

4 51. As a result of Defendants' willful failure to compensate Plaintiff any wage
5 whatsoever for such hours worked, Defendants violated 29 U.S.C. § 206(a).
6

7 52. As a result of Defendants' willful failure to compensate Plaintiff any wage
8 whatsoever for such hours worked, Defendants violated the AMWA, A.R.S. § 23-363.
9

10 53. As a result of Defendants' willful failure to compensate Plaintiff any wage
11 whatsoever for such hours worked, Defendants violated the AWA, A.R.S., § 23-351.

12 54. Plaintiff was a non-exempt employee.

13 55. Defendants knew that – or acted with reckless disregard as to whether –
14 their refusal or failure to properly compensate Plaintiff his final paycheck would violate
15 federal and state law, and Defendants were aware of the FLSA minimum wage
16 requirements during Plaintiff's employment. As such, Defendants' conduct constitutes a
17 willful violation of the FLSA and the AMWA.
18

19 56. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
20 of his rights under the FLSA.
21

22 57. Plaintiff is a covered employee within the meaning of the FLSA.

23 58. Defendants individually and/or through an enterprise or agent, directed and
24 exercised control over Plaintiff's work and wages at all relevant times.
25

26 59. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
27 from Defendants compensation for unpaid minimum wages, an additional amount equal

1 amount as liquidated damages, interest, and reasonable attorney's fees and costs of this
2 action under 29 U.S.C. § 216(b).

3 60. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
4 from Defendants compensation for unpaid wages, an additional amount equal to twice the
5 unpaid minimum wages as liquidated damages, interest, and reasonable attorney's fees
6 and costs of this action under A.R.S § 23-363.

8 61. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
9 from Defendants compensation for his unpaid wages at an hourly rate, to be proven at
10 trial, in an amount that is treble the amount of his unpaid wages, plus interest thereon,
11 and his costs incurred under A.R.S. § 23-355.

13 **COUNT ONE: FAIR LABOR STANDARDS ACT**
14 **FAILURE TO PAY MINIMUM WAGE**

15 62. Plaintiff realleges and incorporates by reference all allegations in all
16 preceding paragraphs.

17 63. As a result of not paying Plaintiff any wage whatsoever for the final pay
18 period of his employment, Defendant willfully failed or refused to pay Plaintiff the
19 FLSA-mandated minimum wage.

21 64. Defendant's practice of willfully failing or refusing to pay Plaintiff at the
22 required minimum wage rate violated the FLSA, 29 U.S.C. § 206(a).

23 65. Plaintiff is therefore entitled to compensation for the full applicable
24 minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as
25 liquidated damages, together with interest, reasonable attorney's fees, and costs.
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1 **WHEREFORE**, Plaintiff, Raymond Nichol, respectfully requests that this Court
2 grant the following relief in Plaintiff's favor, and against Defendants:

- 3 A. For the Court to declare and find that the Defendants committed one of
4 more of the following acts:
5 i. Violated minimum wage provisions of the FLSA, 29 U.S.C. §
6 206(a), by failing to pay proper minimum wages;
7 ii. Willfully violated minimum wage provisions of the FLSA, 29
8 U.S.C. § 206(a) by willfully failing to pay proper minimum wages;
9
10 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
11 determined at trial;
12
13 C. For the Court to award compensatory damages, including liquidated
14 damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
15
16 D. For the Court to award prejudgment and post-judgment interest;
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18 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
19 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set
20 forth herein;
21 F. Such other relief as this Court shall deem just and proper.

22 **COUNT TWO: ARIZONA MINIMUM WAGE ACT**
23 **FAILURE TO PAY MINIMUM WAGE**

24 66. Plaintiff realleges and incorporates by reference all allegations in all
25 preceding paragraphs.
26
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1 67. As a result of not paying Plaintiff any wage whatsoever for the final pay
2 period of his employment, Defendant willfully failed or refused to pay Plaintiff the
3 Arizona minimum wage.

4 68. Defendant's practice of willfully failing or refusing to pay Plaintiff at the
5 required minimum wage rate violated the AMWA, 23-363.

6 69. Plaintiff is therefore entitled to compensation for the full applicable
7 minimum wage at an hourly rate, to be proven at trial, plus an additional amount equal to
8 twice the underpaid wages as liquidated damages, together with interest, reasonable
9 attorney's fees, and costs.
10

11
12 **WHEREFORE**, Plaintiff, Raymond Nichol, respectfully requests that this Court
13 grant the following relief in Plaintiff's favor, and against Defendants:

14 A. For the Court to declare and find that the Defendant committed one of more
15 of the following acts:

16
17 i. Violated minimum wage provisions of the AMWA, A.R.S. § 23-
18 363, by failing to pay proper minimum wages;

19 ii. Willfully violated minimum wage provisions of the AMWA, A.R.S.
20 § 23-363 by willfully failing to pay proper minimum wages;

21
22 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
23 determined at trial;

24 C. For the Court to award compensatory damages, including liquidated
25 damages pursuant to A.R.S. § 23-364, to be determined at trial;

26 D. For the Court to award prejudgment and post-judgment interest;
27

1 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
2 action pursuant to A.R.S. § 23-364 and all other causes of action set forth
3 herein;

4 F. Such other relief as this Court shall deem just and proper.
5

6 **COUNT THREE: ARIZONA WAGE ACT**
7 **FAILURE TO PAY WAGES DUE AND OWING**

8 70. Plaintiff realleges and incorporates by reference all allegations in all
9 preceding paragraphs.

10 71. As a result of the allegations contained herein, Defendants did not
11 compensate Plaintiff wages due and owing to him.

12 72. Defendants engaged in such conduct in direct violation of A.R.S. § 23-350.
13

14 73. As such, unpaid wages for such time Plaintiff worked are owed to Plaintiff
15 for the entire time he was employed by Defendants.

16 74. Defendants knew that – or acted with reckless disregard as to whether –
17 their refusal or failure to properly compensate Plaintiff over the course of his
18 employment would violate federal and state law, and Defendants were aware of the
19 Arizona Wage Act's requirements during Plaintiff's employment. As such, Defendants'
20 conduct constitutes a willful violation of the Arizona Wage Act.
21

22 75. Plaintiff is therefore entitled to compensation for his unpaid wages at an
23 hourly rate, to be proven at trial, in an amount that is treble the amount of his unpaid
24 wages, plus interest thereon, and his costs incurred.
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1 **WHEREFORE**, Plaintiff, Raymond Nichol, requests that this Court grant the
2 following relief in Plaintiff's favor, and against Defendants:

- 3 A. For the Court to declare and find that the Defendants violated the unpaid
4 wage provisions of A.R.S. § 23-350, et seq., by failing to pay wages due
5 and owing to Plaintiff;
- 6 B. For the Court to award an amount that is treble Plaintiff's unpaid wages
7 pursuant to A.R.S. § 23-355, in amounts to be determined at trial;
- 8 C. For the Court to award prejudgment and post-judgment interest on any
9 damages awarded;
- 10 D. For the Court to award Plaintiff's reasonable attorneys' fees and costs of
11 the action and all other causes of action set forth in this Complaint; and
- 12 E. Such other relief as this Court deems just and proper.
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17 **JURY TRIAL DEMAND**

18 Plaintiff hereby demands a trial by jury on all issues so triable.

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21 RESPECTFULLY SUBMITTED this 6th day of January, 2022.

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BENDAU & BENDAU PLLC

By: /s/ Christopher J. Bendau

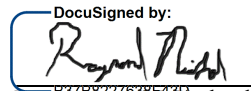
Clifford P. Bendau, II

Christopher J. Bendau
Attorney for Plaintiff

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VERIFICATION

Plaintiff, Raymond Nichol, declares under penalty of perjury that he has read the foregoing Verified Complaint and is familiar with the contents thereof. The matters asserted therein are true and based on his personal knowledge, except as to those matters stated upon information and believe, and, as to those matters, he believes them to be true.

DocuSigned by:

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Raymond Nichol